



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2012-0444; FRL-9746-3]

**Approval and Promulgation of Air Quality Implementation Plans; Virginia;
Fredericksburg 8-Hour Ozone Maintenance Area Revision to Approved Motor Vehicle
Emissions Budgets**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the Commonwealth of Virginia's State Implementation Plan (SIP) revision submitted by the Virginia Department of Environmental Quality (VADEQ) on September 26, 2011. The SIP revision updates the 2009 and 2015 motor vehicle emission budgets (MVEBs) in the Fredericksburg 8-Hour Ozone Maintenance Area (Fredericksburg Area) by replacing the previously approved MVEBs with budgets developed using EPA's Motor Vehicle Emissions Simulator emissions model (MOVES2010a). The revised MVEBs continue to demonstrate maintenance of the 1997 8-hour national ambient air quality standard (NAAQS) for ozone. This action is being taken under the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule is effective on [insert date 30 days from date of publication].

ADDRESSES: EPA has established a docket for this action under Docket ID Number **EPA-R03-OAR-2012-0444**. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by

statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814-2036, or by e-mail at becoat.gregory@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 6, 2012 (77 FR 46672), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of the Virginia SIP revision that updates the 2009 and 2015 MVEBs in the Fredericksburg Area by replacing the previously approved MVEBs with budgets developed using MOVES2010a. By EPA's finalizing the proposed approval, the newly submitted MOVES2010a MVEBs will replace the existing, MOBILE6.2-based budgets in Virginia's SIP and must then be used in future transportation conformity analyses for the Fredericksburg Area according to the transportation conformity rule. *See* 40 CFR 93.118. The previously approved budgets will no longer be applicable for transportation conformity purposes. Additionally, with the approval of the MOVES2010a-based

MVEBs, the regional transportation conformity grace period for not using MOVES2010a for the pollutants included in these budgets will end for the Fredericksburg Area on the effective date of this final approval. See 75 FR 9411, 9414 (March 2, 2010) for background on MOVES2010a and Section II.C for details. EPA received no comments on the NPR to approve Virginia's SIP revision.

II. Summary of SIP Revision

On September 26, 2011, the Commonwealth of Virginia through VADEQ submitted a SIP revision with MVEBs based on MOVES2010a for the years 2009 and 2015 to help ensure that the Fredericksburg Area can demonstrate transportation conformity using MOVES2010a MVEBs once the grace period expires as discussed in more detail in the NPR.

States that revise their existing SIPs to include MVEBs based on MOVES2010a must show that the SIP continues to meet applicable requirements with the new level of motor vehicle emissions contained in the budgets. EPA has determined that the Fredericksburg Area maintenance plan continues to serve its intended purpose with the MOVES2010a-based MVEBs and that the budgets meet the adequacy criteria in the conformity rule at 40 CFR 93.118(e)(4).

III. Final Action

EPA is approving the MOVES2010a-based MVEBs submitted by Virginia for use in determining transportation conformity in the Fredericksburg Area because the submitted budgets will continue to keep emissions below the attainment level and maintain air quality and continue to demonstrate

maintenance of the 1997 8-hour ozone NAAQS. On the effective date of this rulemaking, the submitted MOVES2010a-based MVEBs will replace the existing, MOBILE6.2-based budgets in the Fredericksburg 8-Hour Ozone Maintenance Plan and will be used in future transportation conformity analyses for the Fredericksburg Area. The previously approved MOBILE6.2-based budgets will no longer be applicable for transportation conformity purposes. The following table compares the nitrogen oxide (NO_x) MVEBs developed using MOBILE6.2 to the inventories developed using MOVES2010a.

Fredericksburg Maintenance Area Mobile Source Emissions Comparison Tons

NO_x Per Day

Year	MOBILE6.2 MVEB*	MOVES2010a
2004	19.742	24.064
2009	13.062	17.615
2015	7.576	9.933

*includes conformity buffers

IV. General Information Pertaining to SIP Submittals from the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) “privilege” for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed.

Virginia’s legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a

voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . ." The opinion concludes that "[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1-1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information

to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude Virginia from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting

Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Virginia’s 2009 and 2015 MVEBs in the Fredericksburg 8-Hour Area using MOVES2010a may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 11, 2012

W. C. Early,
Acting Regional Administrator,
Region III.

40 CFR Part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for 40 CFR part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart VV—Virginia

2. In § 52.2420, the table in paragraph (e) is amended by revising the entry for the 8-Hour Ozone Maintenance Plan for the Fredericksburg VA Area. The amendments read as follows:

§ 52.2420 Identification of plan.

* * * * *

(e) EPA-approved nonregulatory and quasi-regulatory material.

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional Explanation
* * * * *				
8-Hour Ozone Maintenance Plan for the Fredericksburg VA Area	Spotsylvania and Stafford Counties; City of Fredericksburg	9/26/11	[Insert Federal Register publication date] [Insert page number where the document begins]	Revised 2009 and 2015 motor vehicle emission budgets for NO _x .
* * * * *				

3. Section 52.2424 is amended by adding paragraph (c) to read as follows:

§ 52.2424 Motor vehicle emissions budgets.

* * * * *

(c) EPA approves the following revised 2009 and 2015 motor vehicle emissions budgets (MVEBs) for the Fredericksburg 8-Hour Ozone Maintenance Area submitted by the Virginia

Department of Environmental Quality (VADEQ) on September 26, 2011:

Applicable geographic area	Year	Tons per day (TPD) NO _x

Fredericksburg Area (Spotsylvania and Stafford Counties and City of Fredericksburg)	2009	17.615
Fredericksburg Area (Spotsylvania and Stafford Counties and City of Fredericksburg)	2015	9.933

[FR Doc. 2012-26403 Filed 10/26/2012 at 8:45 am; Publication Date: 10/29/2012]